

Exhibit 38

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13 San Francisco Bay Conservation and Development

14 Commission

15 Bcdc121312recording

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1 [BACKGROUND CONVERSATIONS]

2 MARK SANDERS: Okay, so the first one
3 has to do with one bathroom versus three.

4 ERIK BUEHMANN: That's fine.

5 MARK SANDERS: Okay. I just wanted to
6 say, there was a letter between BCDC where we
7 said, "Unless authorized, three bathrooms just to
8 be safe, however, we think it'll be just one in
9 the harbor office and one in the retail area." So
10 that was the original plan.

11 ERIK BUEHMANN: Can I just make a
12 clarification here?

13 MARK SANDERS: Yes.

14 ERIK BUEHMANN: Because when I looked at
15 these, I think there was a little bit of
16 confusion. When we authorize something, that's
17 just--it's permissive. It's saying you can build
18 three bathrooms, you can build one bathroom, you
19 don't have to build three bathrooms.

20 MARK SANDERS: Exactly.

21 ERIK BUEHMANN: Those are conditions,
22 and that's different.

23 MARK SANDERS: You're correct.

24 MAN 2: And sometimes in the language of
25 the permit, it can be kind of slippery, and it

1 looks a little like it's--we're saying one thing
2 and we actually, like it's a condition, but it's
3 not actually, it's an authorization.

4 So I just wanted that to be clear, so
5 that when we say, if you want it to be one
6 restroom, that's fine, but then it's going to be
7 authorizing one restroom. If you really want
8 that, that's cool, but--

9 MARK SANDERS: Yeah. What--so I
10 understand that one of the, but two things behind
11 that. First of all, the--each condition, if you
12 will, is repeated three different times in the
13 permit. And one of the issues we have is, when
14 you get to special conditions, it will state it
15 somewhat differently.

16 ERIK BUEHMANN: Yeah.

17 MARK SANDERS: And then, about a month
18 ago, a BCDC representative said, "Oh no, no, no,
19 you misunderstood. We only moved the extra
20 restrooms. We never did that before." And so, I
21 brought all this to show, no, that wasn't the
22 case.

23 We had planned a restroom in the harbor
24 office and one in the retail area. We went for
25 three more restrooms and showers on the other

1 side of the gates, in other words, for the
2 boarders, because they're pretty uncomfortable
3 showering where people are just coming off the
4 street, you know, women and children, stuff like
5 that. So I think this is--that--we agree on the
6 change, but that's the background behind it.

7 ERIK BUEHMANN: Yeah, that's fine. I
8 think it will move a lot faster if the things we
9 agree on, we don't need to talk about them that
10 much.

11 MARK SANDERS: Exactly.

12 MAN 2: As we can just go and--this is
13 fine. I just wanted to be clear that some of
14 these changes, we're going to say okay, but I
15 mean, do you really want that, because you can--

16 ERIC: You're reducing your
17 authorization.

18 MAN 2: Yeah. You're making it harder
19 for you, and you're going to have to make another
20 amendment if you ever want like, you know, like
21 the covered berths, for example. If you ever want
22 that in the future, you're going to have to
23 change the permit again.

24 MARK SANDERS: Yeah, covered berths is a
25 good example.

1 ERIK BUEHMANN: So you don't have to
2 take that out. I mean, we're not going to go down
3 and say like, "Where are the covered berths,"
4 because we're just authorizing that.

5 MARK SANDERS: Right. But since--

6 ELLEN MIRAMONTES: Do you understand
7 covered berths?

8 MARK SANDERS: Yeah, if the covered
9 berths are already removed in Amendment 3, that's
10 why if Amendment 5 to remove them didn't make any
11 sense. They were already removed. But in one spot
12 of the permit, they were left in.

13 MAN 2: I see.

14 MARK SANDERS: So I'm just saying most
15 of the changes you guys were making were
16 permanent and consistent with the permit itself.
17 So the covered slips, there is no demand for it.
18 There is zero demand for covered backs.

19 ERIK BUEHMANN: Okay.

20 MARK SANDERS: And we've got to come
21 back for the retail stuff for the boatyard stuff
22 be back.

23 MAN 2: So Page 4--and let's go back up
24 from the covered boat slips. We were a little
25 confused about where the fencing, where you want

1 fencing, and where you don't want fencing.

2 BRAD MCCREA: And before you answer the
3 question, it says the permit is actually probably
4 not as clear as it could be as well. And so, we
5 appreciate your effort to kind of clarify that.
6 But maybe we can start by--show us where the
7 fences are going to be, and particularly around
8 the boat launch, we want to understand what your
9 thinking there, your intent.

10 BRAD MCCREA: Yeah, so right now--

11 ERIK BUEHMANN: [UNINTEL]--

12 KEVIN: We actually have it drawn on
13 this set here.

14 ERIK BUEHMANN: Okay, well, why don't we
15 just look at it, then? We're going to need a--

16 MARK SANDERS: Yeah, so I'll go up on
17 this one. So originally, this boat launch for
18 rowers was over here. And so, BCDC or somebody
19 said, "Let's have a fence between that and the
20 boat yard, because we don't want those two
21 interfering with each other."

22 BRAD MCCREA: Over there?

23 MARK SANDERS: So the original drawing
24 showed a boathouse here, and for rowers. And this
25 was Stanford Masters. Remember that?

1 ERIK BUEHMANN: Yeah, yeah, yeah.

2 MARK SANDERS: And then, here's the
3 boatyard. And they said, "Well, better have a
4 fence separating that for safety." Well, this is
5 moved over here, okay? So the fence doesn't make
6 any sense anymore, all right?

7 So we moved the house, but we left the
8 fence in. So now to the point. Now the fencing
9 is--my use permit from the city says while this
10 area is in deep, heavy construction, this area is
11 in heavy construction, you've got to restrict it
12 for safety reasons. Until we release it.

13 And so, if you guys come back and say,
14 "Hey, we want paths." And this back and forth.
15 And so, the first offer was, "Well, we can force
16 the city." And the city says, "No, it's a safety
17 issue." And so, the city says, "But if you fence
18 it, we'll let you open the path."

19 ERIK BUEHMANN: So that's one. We know
20 that. We know that's in that one.

21 MARK SANDERS: So this fence along here,
22 along here.

23 MAN: Will it turn and go along there,
24 too?

25 MARK SANDERS: It will have to. Now one

1 of the things--this is where, to your point, we
2 thought we were doing a good thing and it
3 backfired on us. The original plan didn't show
4 this because we thought, a restaurant here, we
5 have no idea what's really going to go out there.
6 But Tim, the guy from BMS--

7 ELLEN MIRAMONTES: Hurley.

8 MARK SANDERS: Hurley, said, well, we're
9 going to have a restaurant here, let's have the
10 return path around, so we don't have to walk all
11 the way around. So we kind of put that in as a
12 description, as we can do it. And suddenly, it
13 became mandatory.

14 So now, we've got this funny thing,
15 where we've got a fence around the building that
16 may or not ever be there. And so, my preference
17 would be, fence the whole damn area. If we have
18 to put this in or if it's appropriate, we'll do
19 it. But otherwise, let's just keep the fence in
20 along the water. And then the other fence--

21 KEVIN: It's just kind of awkward to
22 build a path, when haven't designed the
23 architecture around it.

24 MARK SANDERS: Yeah. And then, we have
25 an island. We've got this island--

1 BRAD MCCREA: In a future date, right?

2 KEVIN: Yes.

3 KEVIN STEVENS: So, well, it shows it
4 because Adrian wouldn't let go of it. We've
5 communicated with her that we would prefer to
6 build this little section of the path after we've
7 designed architecture. And we're going to keep
8 this path on the waterfront and this path on the
9 waterfront. And she absolutely would not let us
10 build that in the next phase.

11 MARK SANDERS: So I did send her the
12 letter to Andrea Gaut saying, "Andrea, we'd like
13 to have the authorization to do this for when and
14 if we get a restaurant." Because Steve was aware
15 of it.

16 ERIK BUEHMANN: So the restaurant would
17 be like here.

18 MARK SANDERS: That's what I was
19 thinking, was an informal restaurant here and
20 maybe a nicer one over here someplace. But for
21 your background, the city said, "Look, think of
22 everything you might want to have out there,
23 because we only want to do this once." So we
24 threw in everything, you know? If we ever have a
25 hotel or a restaurant, I don't know.

1 KEVIN: It makes sense for us to have
2 this path, but it just makes more sense if we put
3 this section in after we design the site.

4 ERIK BUEHMANN: I--yeah, I believe it is
5 you, though, because it's--you know, when you
6 think about the scale of this drawing and so,
7 when you think about the distance, if someone
8 takes a little walk and moves about the same or
9 different manners, some people will just continue
10 from this property and go to this point and back.

11 Some people will want to do a loop
12 thing or whatever. They'll get in a habit. Or
13 some people will just wander. And I think you
14 want to provide that opportunity, because without
15 doing that, you know, it's hundreds and hundreds,
16 in fact--it's just, it's a big space out there.
17 And there will be a desire lane to go this way,
18 to go this way, to go that way.

19 KEVIN: [UNINTEL] recreation, ally
20 walking?

21 ERIK BUEHMANN: What's that?

22 MAN: Are you talking about
23 recreationally walking?

24 ERIK BUEHMANN: I think there will be a
25 desire lane for people.

1 you could just not fence this and do some very
2 minimal, or maybe just cut down the weeds or
3 something? Is there a need to actually fence this
4 area?

5 MARK SANDERS: Utilities. I mean, the
6 underground work--see, we won't be building--it's
7 not like a strip mall where we're building it all
8 at once. We'll probably build either the yacht
9 club or the restaurant first. But we've got to
10 design the whole thing before we know where it's
11 going to be. I mean, this path may be over here.

12 ERIK BUEHMANN: I know. And you know, we
13 can work that out in the future, but is there a
14 reason that this can't just be open ground for
15 the time being, and you could--

16 MARK SANDERS: Just construction.

17 ERIK BUEHMANN: But is there
18 construction occurring within these fenced--

19 MARK SANDERS: We--well, we stop
20 everything here a year and a half ago. So the--
21 everything else out here, the landscaping, the
22 irrigation, all that stuff's to come. So yeah.

23 ERIK BUEHMANN: Okay. But I'm talking
24 once you're able to get these paths available to
25 the public, is there a need that this area needs

1 KEVIN: So I understand that, but if
2 you're just out recreationally walking, why would
3 you have to have a shortcut? I don't understand
4 the logic. I mean, this is something we don't--we
5 do want to do, it just doesn't make logical sense
6 to do it now.

7 MARK SANDERS: Yeah, the idea is now all
8 of this path gets ripped out and when we put in
9 the boardwalk. Now the boardwalk, actually, if
10 you look at the drawing shows, you know, these
11 are patios where people sit in chairs and have
12 coffee and drinks.

13 So there's this big, wide--this all
14 gets ripped out. The boardwalk is going to
15 continue to the restaurant, if the restaurant's
16 there. So this whole area will be configured. And
17 so, if we say that in the permit, look at, as
18 part of phase three, we would retail boardwalk
19 area as being completed. We would want to have a
20 shortcut path.

21 But while there's nothing here, it's
22 just raw mud, and we're really looking to keeping
23 people out of the construction area. It serves no
24 purpose.

25 ELLEN MIRAMONTES: Is there a way that

1 to be protected.

2 MARK SANDERS: We could if...

3 WOMAN 2: Or is there a danger?

4 KEVIN: We could pay to do that. But I
5 am viewing it from a, you know, fiduciary
6 responsible--

7 ERIK BUEHMANN: I'm saying don't
8 landscape it.

9 KEVIN: Okay.

10 ERIK BUEHMANN: Just cut down the risk.

11 MAN 1: No. But what I'm saying is, all
12 of these elements right here, you know, he wants
13 to get done with what are requirements are now,
14 and he wants a restaurant. So where--he's going
15 to be spending time and money doing something
16 that we may rip out, and it just doesn't make
17 sense.

18 ERIK BUEHMANN: So I'm a little
19 confused, probably because I'm just new on this.
20 So you want to keep this a little bit, because
21 you don't have the architecture for whatever is
22 going to show up here?

23 MAN 1: Right. We can't even get to
24 planning there.

25 ERIK BUEHMANN: And is your issue that

1 maybe it might be bigger and go into the space
2 for it?

3 MARK SANDERS: Correct. Now what if this
4 is a boutique hotel and a restaurant? This, you
5 know, the idea was, this was our request to have
6 the path around the future restaurant. We never
7 envisioned that we--somebody said well, get the
8 path in now before you even design the
9 restaurant. That's sort of the sensible and the
10 practical way.

11 KEVIN: And if you looked at what our
12 required view corridors are now, which I really
13 think should be flexible in the future, you are
14 giving, by forcing us to put this path in, you're
15 giving us a very small space where we can develop
16 and build...

17 BRAD MCCREA: I want to back out a
18 little bit because this all started with a
19 discussion about fences. And this item actually
20 talking about fences--

21 BRAD MCCREA: --so here's some ground
22 rules, I think about let's stay on point during
23 this meeting. And if we did come to a
24 disagreement, then we'll just have to table it
25 and parse it out.

1 BRAD MCCREA: I'm not kidding. I'm
2 walking out of this room in an hour and 17
3 minutes. And so, I want to get through as much as
4 we can.

5 KEVIN: So this fence, I mean, we prefer
6 this fence goes like this. And we're allowed to
7 build this in the next space when this is
8 designed. And we've had to build the fence like
9 this, because Adrienne said, we have to put that--
10 -

11 ERIC: We understand. We're going to get
12 to that again and I'll mark it and we'll save it.
13 The question I had was, so here you have very
14 little proposed language about the future haul
15 out facilities--

16 MARK SANDERS: Yeah, I'm just saying
17 that a fence no longer meets the needs, just
18 delete it.

19 ERIK BUEHMANN: But it says here you
20 want it corrected to say, "Install, use and
21 maintain fencing as a means to protect public
22 safety and the boat launch."

23 MARK SANDERS: Yeah, in other words--

24 ERIC BUEHMANN: Boating--so you still
25 want a fence out there or not?

1 MARK SANDERS: It's not--again, this is
2 future, so the boatyard's not designed. But of
3 course, when you have a boatyard with heavy
4 equipment, cranes moving stuff, you're going to
5 want to fence in place.

6 ERIC BUEHMANN: So you want it during
7 construction?

8 ERIC BUEHMANN: Yeah, we--well, no,
9 during boatyard operations, boatyards are very
10 dangerous places.

11 MAN 1: So show me where the fence would
12 be.

13 MARK SANDERS: Well, we know.

14 KEVIN: So this is a future boatyard--

15 ERIC BUEHMANN: I know that, but it's
16 not designed yet--so the thing is, we need to
17 know that. So we need to be able to say,
18 otherwise, what we're worried about is that
19 you're going to build a fence and cutoff public
20 access. So what we want to know is where is--you
21 know, and you can always change it.

22 [OVERLAPPING VOICES]

23 MARK SANDERS: To open phase one is the--
24 -this is parking for the launch ramp and this is
25 storage. So this area here is the only part that

1 is phase 1A. This is big equipment out there.

2 ERIC BUEHMANN: Yeah, yeah.

3 MARK SANDERS: So right now, the only
4 fence is going to be here. So the fencing we have
5 will do this, and if we have to do this, this,
6 and this, that's it.

7 ERIC BUEHMANN: Okay, great. That helps.

8 ELLEN MIRAMONTES: So you are adding
9 some--these specific words, it looks like, Mark,
10 the, "or other needs" was different.

11 MARK SANDERS: Yeah, I was trying to
12 look ahead and say--

13 BRAD MCCREA: You can figure out the
14 words later, what I want to do is figure out--

15 BRAD MCCREA: Because we want fences
16 here and here.

17 MARK SANDERS: No, no, no, no.

18 MAN: To keep people away from the boat
19 travel lift.

20 MARK SANDERS: Yeah, we don't know--

21 MAN: Running like this, does it end--it
22 ends before the trail comes in.

23 MARK SANDERS: The trail stops here,
24 yes.

25 MAN: Yeah.

1 MARK SANDERS: There are piles of rip
2 rap here.
3 ERIC BUEHMANN: This is still end of our
4 phase of construction we're trying to complete.
5 This is a future. I see, yeah. So then this
6 fence will come over down and continue.
7 MARK SANDERS: Yeah.
8 MARK SANDERS: This is the part that was
9 phase 1A.
10 ELLEN MIRAMONTES: [UNINTEL] because it
11 is already authorized. So I'm not sure, is it not
12 okay as it currently stands, is it?
13 ERIC BUEHMANN: Yeah, that's what he's
14 saying.
15 BRAD MCCREA: Yeah.
16 ELLEN MIRAMONTES: Because you want it
17 for other means?
18 MAN: It also talks about the boat haul
19 out.
20 ERIC BUEHMANN: Yeah, it changes how the
21 fence goes. So what we're going to do is we're
22 going to re-write it.
23 MARK SANDERS: Yeah, see this--
24 ERIC BUEHMANN: A line here.
25 MARK SANDERS: This is the one that no

1 longer makes sense because--
2 ERIC BUEHMANN: Exactly.
3 MARK SANDERS: Yes, yes.
4 ERIC BUEHMANN: That's a whole different
5 issue, okay. That's how far, because you're
6 right. A lot of this is written in such a way
7 that it's unclear what they're actually
8 authorizing. So I want to make sure that when we
9 re-do it, we do it so that it actually makes
10 sense.
11 MARK SANDERS: Makes sense.
12 MARK SANDERS: Yes.
13 KEVIN: And just so you're clear, this
14 is a temporary fence for now, then when this
15 phase is developed, we will want to put a fence
16 around the heavy equipment area that stays there,
17 for boat operations.
18 ERIC BUEHMANN: So like, a fence would
19 be around the boatyard.
20 KEVIN: Yes, when we can do that. When
21 we can develop that, yeah.
22 ERIC BUEHMANN: Okay, and we can do
23 that. And then, it just, you know, okay.
24 MARK SANDERS: When--yeah, when we come
25 back for the boatyard permanently, it'll be

1 fencing around the boatyard for safety, and then
2 there's what's called dry storage, where those on
3 trailers are left and it's like a parking lot.
4 Typically, they're fenced and it has a gate for
5 the owners to get in and out. Okay, so that's
6 that.
7 ERIC BUEHMANN: Yeah, and then temporary
8 fencing right here, yes.
9 MARK SANDERS: So the boats--
10 ELLEN MIRAMONTES: So the next two are
11 both about covered berths.
12 MARK SANDERS: One spot left, yeah.
13 ELLEN MIRAMONTES: Actually, back on
14 that fencing, I want to be clear for everyone,
15 because I think there was confusion here. That
16 fencing that is referred to there is dealing with
17 down here. It's not dealing with this.
18 ERIC BUEHMANN: Right, yes. We know
19 that.
20 ELLEN MIRAMONTES: Okay? Because that--
21 MARK SANDERS: This piece right here.
22 KEVIN: Yes.
23 ERIC BUEHMANN: We got a little
24 sidetracked. Okay. Yeah, covered berths--
25 MARK SANDERS: Did we figure out what

1 other means?
2 KEVIN: Other means--
3 BRAD MCCREA: Yeah, we're going to make
4 that very specific about where kind of it's going
5 to go. So here's the--so the words that you wrote
6 are in most cases okay. There's some places we
7 think it could be even clearer than what you
8 wrote, and so, we'll take a crack at making it
9 crystal clear. How's that?
10 KEVIN: Sounds great.
11 ERIC BUEHMANN: Okay. Covered berths,
12 that's fine. Both covered berths ones, that's
13 fine.
14 MAUREEN SANDERS: So do you want to
15 leave it off your list, Mark?
16 MARK SANDERS: What's that? No, they'll
17 delete that one, but they want to change--maybe
18 alter language in other places to--for fencing to
19 allow the maximum public access that's allowable,
20 given the commensurate conditions.
21 ERIC BUEHMANN: So but you don't want to
22 authorize covered berths anymore?
23 MARK SANDERS: No.
24 MAN: Right? Okay, that's fine.
25 MAUREEN SANDERS: Okay.

1 ERIC BUEHMANN: Page 11, Line 11. So
2 this is something we were kind of confused about,
3 what exactly--what the--

4 MARK SANDERS: When you stand...

5 ERIC BUEHMANN: Eastern, northern.

6 MARK SANDERS: When you stand at the
7 harbor, you ask people where north is, and they
8 actually point up along 101 Freeway, but that's
9 actually east. So it's only a matter of--it's
10 just--they don't--it's a sense of direction.

11 ERIC BUEHMANN: So show me where this is
12 referring to. And authorized to construct for
13 public access trail along the north. It says here
14 you want--

15 MARK SANDERS: Yeah, and that goes--

16 ERIC BUEHMANN: It has to reach
17 property.

18 MARK SANDERS: There's--this north would
19 take the path right out there.

20 ERIC BUEHMANN: Yeah, okay.

21 MARK SANDERS: What they meant to say
22 was east.

23 ERIC BUEHMANN: Okay, so east/west.

24 MARK SANDERS: Yeah.

25 ERIC BUEHMANN: Yeah, okay.

1 MARK SANDERS: Good, good.

2 ERIC BUEHMANN: The fence, yeah, that
3 was okay, too. Page 13, 2. Small concrete rubble.
4 Right. So we were a little confused about what
5 you were intending here. And what I wanted to say
6 was it was a--you wanted to kind of save costs
7 that you wanted to just kind of take old concrete
8 and use it--

9 MARK SANDERS: No. No, no, no, it's
10 beneficial reuse of salvaged materials. The
11 condition--it was in our mitigation measures to
12 use broken concrete for rip rap for that--there's
13 a whole bunch of considerations. One of them, it
14 is to lock itself in place where rocks are
15 smoother and they don't.

16 Two, by being small, it doesn't provide
17 a habitat for predator species. And three, it
18 can't have rebar and asphalt, so it's
19 environmentally cleared. In fact, it is habitat
20 friendly.

21 ERIC BUEHMANN: So then that's in this
22 condition, so--

23 MARK SANDERS: Yeah, it's in the
24 condition. However, there was an objection raised
25 by Adrienne that will you have smaller the number

1 MARK SANDERS: So it's just a matter of-

2 -
3 ERIC BUEHMANN: Sense of direction.

4 MAN: That's where I thought it was, so-

5 -
6 MARK SANDERS: Okay. Average depth of
7 15.3 feet versus 15 feet.

8 ERIC BUEHMANN: I'm going to say
9 east/west. That way, it doesn't even--yeah, the
10 depth thing, that's fine.

11 MARK SANDERS: Yeah, and that's
12 thousands and thousands of yards of mud, by the
13 way, so that's important.

14 MAUREEN SANDERS: Okay.

15 MARK SANDERS: Okay, and the harbor
16 house is actually 2,900 square feet, so if you
17 wanted to change it to say, "Nothing larger than
18 3,500," or something to reflect that it's--

19 ERIC BUEHMANN: That's okay. We thought
20 that was okay. And it's--we're on page, yeah,
21 where are we--[UNINTEL]. Okay, now we're on 3,
22 Item 7.

23 MARK SANDERS: Right.

24 ERIC BUEHMANN: Yeah, we thought that
25 was okay.

1 of rip rap over here? And the answer was yes, we
2 had a shore failure there. And there was an
3 engineering job done, and we went to UC Davis and
4 we said, "You've got to use smaller [SAME STUFF?]
5 concrete, but use smaller"--it looks like pea
6 gravel.

7 So because the minute--if you put two
8 feet of rock rubble, it just goes down and it
9 mushes out again. So there's nothing you can do.
10 And so, the engineering that was advised, and
11 obviously, the Corps would advise it.

12 The two places we're using smaller than
13 normal rip rap, is under the landing docks for
14 the launch ramp because those docks are hollow.
15 And they can come down on big rip rap, they break
16 and leak. So it's got to be really small, small
17 stuff. And the other area is this failed area--

18 ERIC BUEHMANN: Yeah.

19 MARK SANDERS: --is one of the things
20 that's we're being fined for it. The interesting
21 thing is, we haven't put it in yet!

22 ERIC BUEHMANN: So you're concerned
23 about the word small.

24 MARK SANDERS: No, no. Adrienne was
25 concerned that it's not regular rip rap. And I--

1 said well, here's all the engineering that told
 2 us to do it this way because it's a safety issue
 3 and it's just the right thing...
 4 ELLEN MIRAMONTES: But--she wanted to
 5 know--she wanted the information to show that
 6 this would hold up. I think that's okay
 7 MARK SANDERS: Yes, and so we provided
 8 that.
 9 ERIC BUEHMANN: And that was fine, that
 10 was wonderful. Yeah, okay.
 11 ELLEN MIRAMONTES: And you provided the
 12 information.
 13 MARK SANDERS: Which frankly, is the
 14 only way they do it, when you have a soft area,
 15 you can't put two feet of rip rap.
 16 BRAD MCCREA: So how does--what needs to
 17 be changed in--on Page 13 of the permit number
 18 two?
 19 MARK SANDERS: I think--
 20 ERIC BUEHMANN: Because it just sounds
 21 like you're saying--
 22 MARK SANDERS: Just concrete rubble.
 23 ERIC BUEHMANN: Because what you're
 24 saying, it doesn't sound like--it sounds like
 25 it's consistent with this. Well, it sounds like

1 that's what you did using the refuse.
 2 MARK SANDERS: I agree you guys
 3 ELLEN MIRAMONTES: Yeah, oh, oh.
 4 MARK SANDERS: The allegation in the
 5 fine says we were to use a proper rip rap.
 6 ELLEN MIRAMONTES: Oh.
 7 MARK SANDERS: So this is a reaction to
 8 an allegation made against the harbor for failure
 9 to use the right rip rap. And now we said,
 10 "Here's the engineering report."
 11 ELLEN MIRAMONTES: Yeah.
 12 MARK SANDERS: Here's why we have to do
 13 it that way.
 14 ELLEN MIRAMONTES: I do remember our
 15 discussions, and Adrian requested the information
 16 and we received it. And I believe, I--it looked
 17 fine to me. I don't know if she had Raphael look
 18 at it. I don't believe we had any problems. We
 19 just wanted to be--
 20 MARK SANDERS: Okay, yeah, I never had
 21 anything back from the staff.
 22 ELLEN MIRAMONTES: Satisfied that it
 23 would be--
 24 ERIC BUEHMANN: So I don't think that
 25 needs to be a change here.

1 WOMAN 2: No, it doesn't appear that
 2 staff is asking for a change here, either.
 3 ERIC BUEHMANN: Okay.
 4 MARK SANDERS: All right, well then, the
 5 next one to follow on is--there's two or three
 6 areas, Brad. One of the things I'm not charged
 7 with is try to make agencies more aware of things
 8 from the water side, as part of the marina. And
 9 so, a lot of people think of speed as a mile an
 10 hour for cars.
 11 ERIC BUEHMANN: But I think we're okay
 12 with this one.
 13 MARK SANDERS: Okay, yeah. Eight miles
 14 an hour on boats is no way--
 15 ERIC BUEHMANN: It makes sense to us,
 16 and we'll change that.
 17 MARK SANDERS: Okay, good.
 18 ERIC BUEHMANN: Same with Page 17, Item
 19 5, the live aboard.
 20 MARK SANDERS: Okay.
 21 ERIC BUEHMANN: Amount. That's fine.
 22 MARK SANDERS: Good.
 23 ERIC BUEHMANN: Page 30, Paragraph 5,
 24 personal watercraft. That's fine. Page 30,
 25 Paragraph 5, Line 1, that's a similar kind of

1 channel markers refuge signs thing, and that's
 2 okay. We're going to kind of talk a little bit
 3 more about this later, but I think that that's--
 4 most of those changes are okay.
 5 MARK SANDERS: Okay. A little bit of
 6 background and we can put that one to bed easily.
 7 I brought the original studies that were sent as
 8 part of the EIR and the letter from Clyde Morris,
 9 at the Department of Fish and Game who said, who
 10 wrote that exact language in his letter.
 11 It got included in the EIR and the
 12 Planning Commission. It got included in the BCDC
 13 package to the commissioners, the exact same
 14 language. And then, actually, when we met the
 15 Fish and Wildlife and the staff and Coast Guard
 16 and they said, "He can't do that." And Wooten
 17 said, I mean, Clyde said, "Of course we can. I
 18 understand now."
 19 And so, it was just dismissed. So the
 20 Coast Guard, NOAA, Fish and Game were all happy
 21 with it. And again, Steve was involved.
 22 ERIC BUEHMANN: We think that's fine.
 23 MARK SANDERS: And so, it's a non--
 24 ERIC BUEHMANN: Yeah, that looks like a
 25 fine change. Page 2, Item 14--

ERIC BUEHMANN: Now we're getting into the old dreds, old areas.

MAN: Okay, yeah. So some of these, we'll be happy to change, and some of them, we just kind of can't. But we'll just have a kind of look at--this one, it looks like it's okay because what you're saying is that there's going to be parking, it just will happen in different phases.

MARK SANDERS: Yeah, there is a--we were required to file with the County documents in--and John Smith, your attorney, at the time. The public parking areas were put in three places. One was here, one was here, four, four, and then one was over here at four.

ERIC BUEHMANN: Okay.

MARK SANDERS: And then, in addition to that was the launch ramp public parking.

ERIC BUEHMANN: Okay, okay.

MARK SANDERS: That was it.

ERIC BUEHMANN: Okay.

MARK SANDERS: And so, each of these are associated with a place. And so, you can't put parking out here until you have a street and a parking lot for a building that's supposed to be...

ERIC BUEHMANN: That makes sense. So we're okay with that. So Item 2, or Page 2, Item 15. So this is one that we needed to understand.

MARK SANDERS: Okay.

ERIC BUEHMANN: So you're saying that parts of the trails should be--we say 10 foot planned path. Let's go to the--it's Page 2.

ELLEN MIRAMONTES: So we've discussed this, and in the past--

MAN: A remodeling, yeah.

ELLEN MIRAMONTES: We've discussed this at length, but perhaps it was you, Adrian, and I, mostly. So what we came to in our discussions is that we would stick with the 12 to 15-foot width for the future, for the next phase. I believe it is phase three, right?

And for the time being, we would amend the permit to accept the 10-foot paths that you've built, so that you're in compliance with the current condition as a 10-foot path. But in the future, as a part of phase three, that at that point, it would widen to fit 12 to 15.

KEVIN: What we changed.

ELLEN MIRAMONTES: What's that?

MAN: What we change or add in phase

three isn't--

ELLEN MIRAMONTES: The 12 to 15 would be consistent throughout that, would be what would be the required path.

KEVIN: Okay.

ELLEN MIRAMONTES: So you can stick with 10 feet for now for however long it is prior to your phase three. And then--

KEVIN: Okay, so I'm a little confused because I agree with you on most of that discussion.

ELLEN MIRAMONTES: Okay.

MAN: But I've never heard in our discussions that we talked about going back in the phase three and revising all the paths to be wider. Is that what you're suggesting?

ELLEN MIRAMONTES: Yes.

KEVIN: Because we--

ELLEN MIRAMONTES: So then we've had a misunderstanding.

KEVIN: You and Adrian may have discussed that.

ELLEN MIRAMONTES: Yeah.

MAN: But we've never discussed that. And it's not possible in some locations, because

we have bio swayles. And in the space between the parking to the, the edge of the rip rap, it's not possible to put in a 12-foot wide path and keep our bio swayles. So we're going to have to sacrifice bio swayles to widen the path two feet.

ELLEN MIRAMONTES: So--

KEVIN: And these all have--Swayles are required by...

MARK SANDERS: This may help. I went back--this is the original BCDC permit presentation plan, and it includes all the mitigation measures, including the one that says, "Our landscape and shoreline treatment must replicate Pacific Shore Center."

Now Pacific Shore Center's BCDC permit came through just a year earlier than ours. It is their permit, and it specifies 10-foot paths, being that they have 10-foot paths.

We had, in our drawing, in this file, I had put down 12-foot paths because we had enough room for parking, two lanes, a landscape area, and the path. The Water Board says, "No, no, no, we want a four-foot bio swayle."

There goes--we go back down to a 10-foot path. Now the bay trail says ten feet, all,

1 right, they told me they think I was supposed to
2 have 10-feet.

3 ELLEN MIRAMONTES: When did they tell
4 you that?

5 MARK SANDERS: They gave me the criteria
6 for different paths, bicycle paths, two-way
7 paths, and they said for our spot, again,
8 consistent with the Pacific Shore Center, 10-foot
9 paths.

10 ELLEN MIRAMONTES: But I mean, is this
11 present day or is this--

12 MARK SANDERS: When my permit was issued
13 in 2003.

14 ELLEN MIRAMONTES: When your permit was
15 issued.

16 MARK SANDERS: And so, all the--and so,
17 the drawings were changed and shown--I mean, the
18 drawings that were presented in 2007, when we
19 went to the DG Paths and away from asphalt. They
20 were changed to 10 feet, A, to conform with the
21 permits, and B, to conform with Pacific Shore
22 Center, because at the time, they say, "Well, it
23 doesn't make sense to have 2,000 foot of 10-foot
24 paths, and then 400 feet, where it widens out to
25 12-feet." Now having said all of that, what I

1 would suggest we do--do you have your drawing
2 again?

3 ELLEN MIRAMONTES: Yes.

4 MARK SANDERS: So along here, we only
5 have 10-feet. We can want whatever we want, but
6 there's only room for 10 feet, and it's built and
7 you've got power boxes and everything on one side
8 and you've got the street on the other side.

9 KEVIN: And bio swayes.

10 MARK SANDERS: And bio swayes. There's
11 just no--you can't do it.

12 MAN: [UNINTEL]--

13 MAN: Yes.

14 MARK SANDERS: There is. There's special
15 landscaping in the bio swell.

16 MAN: Oh, in the bio swells.

17 MARK SANDERS: Okay? Now this--

18 MAN: Not between like the sidewalk and
19 [UNINTEL].

20 MARK SANDERS: Yes, that's where the bio
21 swell is.

22 MAN: Oh okay.

23 MARK SANDERS: So there's this
24 [UNINTEL]. You know, there's--so [UNINTEL] side,
25 there's the [UNINTEL], the parking on that side,

1 two lanes of street, parking again, [UNINTEL],
2 the bio swell, the 10-foot path, and then the rip
3 rap.

4 MAN: I see.

5 MARK SANDERS: So there's no physical
6 way to put it in first. Secondly, along here,
7 we've already built the 10-foot paths to here,
8 but that all gets ripped out and replaced with a
9 15-foot boardwalk, which was always the plan.

10 MAN: In the next phase.

11 MARK SANDERS: In the next phase. What
12 is practical to do, and then along here, this is
13 kind of problematic because we don't know what
14 the boardwalk's going to look like. But here is
15 where we can make wider paths.

16 Actually, along the shoreline is 10-
17 feet coming up here, but if somebody wants a 12-
18 foot path from here to here, we can do it if
19 there's room. We're not going to build anything
20 out here. We're not going to build anything out
21 there. It's the only actual place where we can
22 build it there.

23 KEVIN: There's room to build it out
24 there, that will exist in [UNINTEL] path there is
25 10 feet. I mean, we can widen it out to 12 feet.

1 And it's possible to do that, but in another
2 location, it's not possible unless we rip out our
3 parking lot.

4 BRAD MCCREA: So it sounds like you have
5 wider paths over--[UNINTEL] you're suggesting is
6 we could have wide paths to the Pacific shores
7 connection, we could have wide paths along the
8 shops. We could have--you know, and on the other
9 side, we could have wider paths along the
10 boatyard, and there's--get some slop in there.

11 And we could--but you're saying there's
12 just a physical constraint between the bio swayle
13 and the curve?

14 MARK SANDERS: Yeah.

15 MAN: Okay.

16 ELLEN MIRAMONTES: I can't tell what the
17 distances are at this scale of a drawing. Of
18 course, you can't lay a scale down, that plan
19 scale and know it exactly. I don't know. But
20 what--so what you're saying is that you have 10
21 feet between the edge of the parking lot and the
22 edge of the path as it stands now? And then you
23 have another 10--and you have to have a 10-foot
24 bio swayle, apparently? How is that determined?

25 ERIC BUEHMANN: And whatever it is,

1 it's--

2 ELLEN MIRAMONTES: It's 10 in your
3 detail here. Is that a requirement?

4 MARK SANDERS: Well, if the bio swale
5 is 10 feet, yeah, it's within the boundary and
6 all that.

7 ELLEN MIRAMONTES: So is that--that's
8 the requirement?

9 KEVIN: So that was designed by--

10 MARK SANDERS: The building consultant,
11 yeah. But the fact is, you guys, the permit says
12 replicate Pacific Shores. Your permit said that.
13 All the permits say it. And replicate Pacific
14 Shores is 10 feet.

15 KEVIN: And...

16 ELLEN MIRAMONTES: In this site--

17 KEVIN: --your own general rules around
18 the Bay Trail. When we were researching this, we
19 found in a lot of places in your own
20 documentation of just general Bay Trail rules
21 that you were stating 10-foot wide paths.

22 ELLEN MIRAMONTES: Uh-huh.

23 KEVIN: You've had a lot of
24 inconsistency--you don't want inconsistency in
25 your documentation about how you treat the Bay

1 Trail in general. And then, in your own
2 documentation about this project.

3 ELLEN MIRAMONTES: Because it is very
4 specific.

5 MAUREEN SANDERS: How far--how long a
6 distance is it that we're talking about, where
7 you feel constrained for it to be only 10 feet?
8 How many--how long is that area of the path?

9 MARK SANDERS: Entirely, it's about
10 1,500 feet.

11 MAUREEN SANDERS: 1,500?

12 MARK SANDERS: [UNINTEL] all the way to
13 the--

14 ELLEN MIRAMONTES: Don't have a scale.

15 KEVIN: Yes.

16 ELLEN MIRAMONTES: I don't know how to
17 work without a scale.

18 KEVIN: It's just this length right
19 here. It's just not workable.

20 ERIC BUEHMANN: Here's what I think
21 about that, and that is is that, you know, there
22 is a variety of different ways to approach the
23 Bay Trail. And even if you look at the public
24 accesses on either, it talks about, and there's
25 decomposed granite trails, there's promenades,

1 there's trails with decomposed granite, there's
2 asphalt trails, et cetera.

3 And really, we've determined what's
4 best for each and every site. Where it's
5 appropriate for the sort of pastoral landscape of
6 Pacific Shore, which is just green grass and then
7 an asphalt ribbon running along the shoreline.

8 It may not be best, but it's not the
9 same as an area where you have people getting out
10 of their cars trying to get to the trail, where
11 you have people walking up from the docks with
12 coolers, and you have people, and then they're
13 trying to accommodate through traffic going the
14 other way.

15 A marina environment, it's very
16 different and sort of environment at Pacific
17 Shores. And I think the extra width is really
18 important to provide the buffer to this space
19 needed for all of these different user groups, to
20 sort of occupy the same margin.

21 So that's why we--you know, we're
22 looking for--it probably should be wider than 12
23 feet. It probably should be 15 feet. If you look
24 at any marina, right, a promenade experience
25 makes more sense.

1 Now this is a relatively remote marina.
2 It's not like South Beach Harbor, where it's
3 right next to the Giants Ballpark. At the same
4 time, Pacific Shores is a highly populated area.
5 So we would appreciate it if you'd go back or if
6 we could continue this discussion about how to
7 carve out at some future date, and who knows when
8 that--this will get kicked in or triggered, but
9 that the bio swale would be augmented, shaved
10 off to allow, what are we talking about, two foot
11 wide?

12 ELLEN MIRAMONTES: Two feet.

13 ERIC BUEHMANN: Think of additional
14 asphalt paving surface to be determined later?

15 ELLEN MIRAMONTES: Yeah, I mean, it
16 could be that you could choose to stick with
17 decomposed granite or perhaps you would want to
18 modify it at that time.

19 ERIC BUEHMANN: I mean, really we're
20 talking about--

21 ELLEN MIRAMONTES: That would be up to
22 you.

23 ERIC BUEHMANN: --a requirement for a
24 future widening, many years from now.

25 KEVIN: I'm just--I just want to get--I

<p style="text-align: right;">Page 42</p> <p>1 have to state this. Now this is the third story 2 we've heard from you guys from what you want. And 3 it's a little frustrating on the inconsistencies, 4 because it--I'm going to start recording every 5 one of our conversations because we had many, 6 many, many discussions about this.</p> <p>7 And coming back and widening the paths 8 along this side was never part of our discussion. 9 We were very clear about from this point up, we 10 wanted it to be much wider. And any new things 11 we're building, we want to be in compliance with 12 the 12 feet you're requesting right now.</p> <p>13 But now you're--what your recollection 14 is, is it's a third version of what we've talked 15 about. And that's where this is dragging out, and 16 it's very frustrating. And we've had the same 17 thing happen on many cases with Adrian, where 18 we've spent a month discussing one point, we've 19 documented it, we've shared these points with 20 her, we've printed them out, made sure you guys 21 were happy with it again, and then we get her 22 revised permit and it's something totally 23 different.</p> <p>24 So I just feel like if we're going to 25 move ahead with this, we can't keep revising</p>	<p style="text-align: right;">Page 43</p> <p>1 every step. We have to--if we agree with you guys 2 on something, we've got to be able to trust that 3 we can move forward in our next meeting, it's not 4 going to change drastically.</p> <p>5 ELLEN MIRAMONTES: Okay. Kevin and Matt, 6 I'm not revising what I said. I think what 7 happened is we had a misunderstanding. We talked 8 about you've got 10 feet out there now, and we 9 think that's sufficient for the time being.</p> <p>10 We do feel that the 12 to 15 is 11 appropriate-- 12 [SOUND CUTS OUT] 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 44</p> <p>1 Gotham Transcription states that the preceding 2 transcript was created by one of its employees 3 using standard electronic transcription equipment 4 and is a true and accurate record of the audio on 5 the provided media to the best of that employee's 6 ability. The media from which we worked was 7 provided to us. We can make no statement as to 8 its authenticity.</p> <p>9</p> <p>10 Attested to by:</p> <p>11</p> <p>12</p> <p>13 Sonya Ledanski Hyde 14 15 16 17 18 19 20 21 22 23 24 25</p>	